

NEBRASKA ADMINISTRATIVE CODE

TITLE 272, NEBRASKA ADMINISTRATIVE CODE, CHAPTER 19

NEBRASKA STATE PATROL

Sexual Offender Registration

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NEBRASKA ADMINISTRATIVE CODE

TITLE 272 NAC 19

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Title 272 - NEBRASKA STATE PATROL

Chapter 19 - Sexual Offender Registration

001 SCOPE AND PURPOSE

001.01 These regulations are to implement the Sex Offender Registration Act pursuant to section 29-4013 R.R.S. 1943 of the Nebraska statutes as amended by LB 204 passed in 1998 and LB 564 passed in 2002. The Nebraska act was passed in compliance with the federal mandate in the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act of 1994, as amended. The general objective of this act is to protect people from child molesters and violent sex offenders through registration requirements and community notification.

002 DEFINITIONS

002.01 “Aggravated offense” means any registrable offense which involves the penetration of a victim under the age of twelve years by any means or a victim twelve years of age or older through the use of force or the threat of serious violence.

002.02 “Attends school” means enrollment in any educational institution in the state on a full-time or a part-time basis regardless of the number of hours or credits involved. This includes vocational as well as academic institutions and both credit and non-credit courses.

002.03 “Employed or carries on a vocation” means any full-time or part-time employment, with or without compensation, which lasts for a duration of more than fourteen (14) days or for an aggregate period exceeding thirty (30) days in a calendar year.

002.04 “Governmental agency” shall mean a unit or subdivision of government established by

statute which has employees paid by the state or local subdivision or government. It does not include quasi-governmental organizations or private enterprises having a contractual relationship with a governmental unit.

002.05 "Incarcerated" shall mean the physical holding or supervisory control over a person by a jail, penal or correctional facility or by a public or private institution at the direction of a jail, penal or correctional facility or a court. A person shall be considered incarcerated during short periods of supervised release such as work-release.

002.06 "Law enforcement agency" shall mean a recognized police department, sheriff's office, probation or parole officer, or the Nebraska State Patrol having an assigned originating agency identifier (ORI) issued by the Federal Bureau of Investigation.

002.07 "Listed offense" shall mean the offenses listed in section 003.01 of these regulations which are the same as those listed in section 29-4003 R.R.S. 1943.

002.08 "Mental abnormality" shall mean a congenital or acquired condition of a person that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of a criminal sexual act to a degree that makes the person a menace to the health and safety of other persons.

002.09 "Mental health professional" shall mean a practicing physician, practicing psychologist, or a practicing mental health professional who is licensed to practice such profession in this state.

002.10 "Minor" shall mean a person below the age of eighteen (18).

002.11 "Nebraska State Patrol" shall mean the Sex Offender Registration and Community Notification Division of the Nebraska State Patrol, P.O. Box 94907, Lincoln, Nebraska 68509.

002.12 "Other jurisdiction of the United States" shall mean any federal court, tribal court, or any military court of the United States.

002.13 "Person" shall mean an individual subject to the registration requirements and does not include corporations or other entities as the term is sometimes used in the legal sense.

- 002.14 “Personnel” as used herein shall mean personnel assigned to the Sex Offender Registration and Community Notification Division of the Nebraska State Patrol and those other employees within the Nebraska State Patrol who are necessary for handling registrations, classifications, notifications, or appeal hearings.
- 002.15 “Personality disorder” shall mean an enduring pattern of inner experience and behavior that deviates markedly from the expectations of the individual’s culture, is pervasive and inflexible, has an onset in adolescence or early childhood, is stable over time, and leads to distress or impairment.
- 002.16 “Postsecondary educational institution” shall mean any institution with a formal instructional program whose curriculum is designed primarily for students who have completed the requirements of a high school diploma or its equivalent. This includes programs whose purpose is academic, vocational, and continuing professional education, and includes avocational and adult basic education programs.
- 002.17 “Prior conviction” shall mean a conviction for one of the listed offenses (or an offense substantially equivalent) which precedes another conviction for a listed offense (or an offense substantially equivalent). The earlier or “prior” conviction can be from any time before the later offense and can be from any state or federal jurisdiction.
- 002.18 “Risk assessment instrument” or “instrument” shall mean the Risk Assessment Instrument formally developed for the assessment of the risk potential that sex offenders will commit another sexually related offense.
- 002.19 “Scoring guidelines” shall mean the guidelines developed for use by personnel within the Nebraska State Patrol in completing the Risk Assessment Instrument to determine the risk that the offender will commit another sex offense.
- 002.20 “Sexually violent predator” shall mean a person determined by a court to be a sexually violent predator at the time of sentencing for one of the listed offenses. The judge will determine whether this is a person "who suffers from a mental abnormality or personality disorder that makes the person likely to engage in sexually violent offenses directed at a stranger or at a person with whom a relationship has been established or promoted, for the primary purpose of victimization." A person determined to be a sexually violent

predator or a sexually violent offender in a federal jurisdiction or in another state will be classified as a sexually violent predator in Nebraska.

002.21 "Substantially equivalent offense" shall mean a criminal offense from another state, territory, commonwealth or federal jurisdiction which has largely the same basic elements as one of the Nebraska listed offenses.

002.22 "Supervised release" shall mean any release from confinement which is conducted under supervision and exceeds five days in duration. It shall include probation, parole, a work release program, furlough and any other type of release except for an unconditional discharge.

002.23 "Temporary domicile" shall mean a place at which the person actually lives even though on a temporary basis and even though he or she may plan to return to their permanent domicile or to another temporary domicile. For purposes of this regulation, a temporary domicile is any place in which the person lives or stays for a period of five (5) working days or more.

002.24 "The Act" shall mean the Sex Offender Registration Act found in the statutes of Nebraska in sections 29-4001 through 29-4013 R.R.S. 1943.

002.25 "Victim" shall mean the subject of a sexual assault or other offense listed in section 003.01 of these regulations whether the offense is the one requiring registration, is a prior or subsequent offense, or is an offense which was charged but dismissed through plea negotiations. Victim shall also include the parents or guardians of minors or vulnerable adults.

002.26 "Working days" shall mean Monday through Friday but shall not include any day which is a state holiday. State Holidays are: New Years Day, Martin Luther King, Jr. Day, President's Day, Arbor Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, Day after Thanksgiving, and Christmas Day.

003 APPLICABILITY

003.01 The registration requirement applies only to those persons who have plead guilty or been found guilty of one of the following offenses (referred to elsewhere as “listed offenses”):

003.01A Kidnapping pursuant to section 28-313, R.R.S. 1943 when the victim is a minor, except when the person is the parent of the minor and was not convicted of any of the below listed offenses;

003.01B False imprisonment pursuant to section 28-314 or section 28-315, R.R.S. 1943 when the victim is a minor;

003.01C Sexual assault in the first, second or third degree pursuant to section 28-319 or 28-320, R.R.S. 1943;

003.01D Sexual assault of a child pursuant to section 28-320.01, R.R.S. 1943 (where the victim is 14 years old or younger);

003.01E Sexual assault of a vulnerable adult pursuant to subdivision (1)(c) of section 28-386 R.R.S. 1943;

003.01F Incest of a minor pursuant to section 28-703 R.R.S. 1943;

003.01G Pandering of a minor pursuant to section 28-802 R.R.S. 1943 (inducing a minor to be a prostitute);

003.01H Visual depiction of sexually explicit conduct of a child pursuant to section 28-1463.03 or section 28-1463.05 R.R.S. 1943 (child pornography); or

003.01I Criminal child enticement pursuant to section 28-311 R.R.S. 1943; or

003.01J Attempt, solicitation, or conspiracy to commit any of the listed offenses.

003.02 The registration requirement applies to any person who lives in the State of Nebraska or who is employed, carries on a vocation, or attends school in the State of Nebraska and who:

- 003.02A Pleads guilty or is found guilty of one of the listed offenses on or after January 1, 1997;
- 003.02B Was incarcerated in a jail or other penal facility on January 1, 1997 as a result of pleading guilty or being found guilty of one of the listed offenses prior to January 1, 1997;
- 003.02C Was incarcerated in a public or private institution on January 1, 1997 as a result of pleading guilty or being found guilty of one of the listed offenses prior to January 1, 1997;
- 003.02D Was on probation or parole on January 1, 1997 as a result of pleading guilty or being found guilty of one of the listed offenses prior to January 1, 1997;
- 003.02E Enters the state of Nebraska having, at any time during the preceding ten (10) years, pleaded guilty or been found guilty of any offense or having been released from incarceration, probation or parole for any offense in another state, territory, commonwealth or other jurisdiction of the United States that is substantially equivalent to the listed offenses; or
- 003.02F Enters the state of Nebraska having been registered at any time as a "sexually violent offender" or "sexually violent predator" in another state, territory, commonwealth or other jurisdiction of the United States.

003.03 Persons convicted of violations of the criminal child enticement statute, section 28-311 R.R.S. 1943, the kidnapping statute, section 28-313 R.R.S.1943, or the false imprisonment of a minor statutes, sections 28-314 and 28-315 R.R.S.1943 will be required to register unless the sentencing judge determines, at the time of sentencing, that the facts of the case are such that the person is not subject to the Sex Offender Registration Act. This determination will be necessary when the victim of the crime is not a minor because the pleadings and criminal history will not necessarily show the age of the victim.

003.04 A person shall be considered incarcerated on January 1, 1997 even though he or she

may not be physically present in the incarcerating facility due to a temporary furlough, community furlough, house arrest or administrative leave.

003.05 A juvenile is not required to register unless he or she is tried as an adult and either plead guilty or is found guilty. An adjudication of delinquency is not the same as a conviction in adult court even though the conduct on which the adjudication is based would have required registration if the person was tried as an adult.

003.06 The registration requirement does not apply to a person who:

- 003.06A Is convicted of any offense other than those listed above or the substantial equivalent (if the conviction is in a jurisdiction other than Nebraska);
- 003.06B Is convicted in Nebraska before January 1, 1997 but is not in any penal facility or jail, public or private institution, or on probation or parole for such offense on January 1, 1997; or
- 003.06C Is a juvenile adjudicated "delinquent" or "in need of special supervision" by the juvenile courts;
- 003.06D Is found Not Guilty by Reason of Insanity, is acquitted, or is placed in pre-trial diversion (without a guilty plea or finding of guilt) for any of the listed offenses.
- 003.06E Has received a full pardon for the offense(s) which would otherwise require registration. A person receiving a set-aside for a conviction requiring registration is still required to register.

003.07 A person who is appealing a conviction requiring registration is required to register and comply with other provisions of the law during the appeals process.

003.08 A person who is required to register must continue to comply with the Act for a period of ten (10) years after the date of discharge from probation, supervised release, parole or release from incarceration, whichever date is the most recent unless he or she is required by the court to register for life. The ten (10) year time period for compliance

shall not include any time during which the registrant is incarcerated in a jail, penal or correctional facility, or any other public or private institution nor any time during which the person is knowingly or willfully failing to comply with the registration requirement.

003.09 A person sentenced for a registrable offense shall be required to register for the remainder of his or her life if:

003.09A The sentence imposed is for an aggravated offense;

003.09B The person has a prior conviction for a registrable offense; or

003.09C The court determines that the person is a sexually violent predator.

003.10 A person entering the state of Nebraska having already been registered under a lifetime registration in another state, or meeting the criteria for lifetime registration in this state by having convictions for the same or substantially equivalent offenses, shall be required to register for the remainder of his or her life.

003.11 A person required to register only because he or she is employed, carrying on a vocation, or attending school in the state of Nebraska will be required to register in the location in which he or she works or attends school and will likely be required to register in the out-of-state location in which he or she resides depending on the laws of the state of residence. This requirement for nonresident workers and nonresident students applies to all types of employment and all schools and should not be confused with the similar but distinct requirements applying to postsecondary educational institutions which are set forth in section 009 of these rules. The requirements for reporting changes of address or name found in section 008 of these rules apply to all changes of this type of information and not just postsecondary educational institutions.

004 REQUEST FOR DETERMINATION OF APPLICABILITY

004.01 The Nebraska registration statutes require registration only upon pleading guilty or being found guilty of one of the listed offenses. Other states may have much more broadly-based registration requirements. For example, some states require registration when the person is "found to have committed" an offense but is not convicted due to

insanity, incompetency or other procedural grounds and, in at least one state, even if found responsible for a sexual offense in a civil trial. States may also require a person to register for juvenile offenses, crimes committed before the effective date of the Nebraska statute, or for crimes which differ from the crime listed in Nebraska (e.g., kidnapping by a parent).

004.02 Any person may request a determination of applicability of the Nebraska registration program. Such a request must be addressed to the Nebraska State Patrol, Sex Offender Registration Program, P.O. Box 94907, Lincoln, Nebraska 68509. The request must include:

004.02A Name, date of birth, address and phone number of the requestor;

004.02B Description of the criminal act(s) which are the subject of the inquiry. This must be specific as to the crime of which the individual was convicted and the state in which convicted;

004.02C Court action on the offense(s) to include: name of the court; location of the court; date of the action; nature of disposition of the case; and the name of some prosecutorial or court official who will be able to verify this information.

004.03 An administrative determination will be made and the requesting individual advised of this decision in writing within thirty (30) days of the request. An individual not satisfied with the administrative determination of applicability of the program to their situation can file an appeal to the Superintendent of Public Safety and request a formal determination under the Administrative Procedures Act. Appeals from Administrative Procedures Act determinations can be filed in the Lancaster County District Court. Persons receiving an adverse administrative determination can also utilize the expungement procedure set forth in a later section of these regulations.

004.04 Requesting a determination of the applicability of the registration program does not extend the time limits for registering and does not relieve the individual of the duty to register. If an individual has registered and a determination is made that registration is not required, the information will be removed from the registry and the individual so notified.

005 NOTIFICATION REQUIREMENTS

005.01 Sentencing courts shall provide written notification of the duty to register at the time of sentencing to persons having pleaded guilty or been found guilty of one of the listed offenses. The form to be used has been prepared by the Attorney General. It shall include information about the reporting requirements imposed by statute should the defendant move within the same county, to another county, or to another state. It shall also include notification about the reporting requirements should the defendant work at or attend a postsecondary educational institution or go to another state to work or attend school. The notification shall be signed by the person and a copy of both the signed notification and the journal entry of the court shall be provided to the County Attorney, the Nebraska State Patrol, the Sheriff in the county listed as the offender's future domicile, and the defendant. The court shall retain a copy of the signed notification form and also the supporting information, if any, pertaining to a determination that the offender is a sexually violent predator.

005.02 The Department of Correctional Services or a city or county correctional or jail facility shall provide written notification of the duty to register to any person committed to its custody for a listed offense. The notification form shall contain the same information as that used by the courts as specified in section 005.01 above. The form to be used has been prepared by the Attorney General. The notification shall be read and signed by the person prior to his or her release. A signed copy of the notification shall be retained by the facility and another provided to the Nebraska State Patrol and to the person provided the notification. A copy shall also be provided to the Sheriff in the county listed as the offender's future domicile unless it is outside of the state of Nebraska.

005.03 The Department of Motor Vehicles shall place a notice on all motor vehicle operator license applications starting January 1, 1997 which will inform applicants of the duty to register. Such notice shall be in a form approved by the Attorney General.

005.04 Refusal to sign the notification form by a person required to register under the Act is a violation of the Act. Refusal to sign the notification form by a person not required to register under the Act is a violation of these regulations. Violations of the Act and of these regulations may subject the person to criminal prosecution as specified in Sections

017.02 and 017.03. If a person receiving a notification form refuses to sign the form, that fact shall be noted on the form by the individual providing the notification. Copies shall be made available as specified above.

006 REGISTRATION PROCEDURE

006.01 A person to whom the registration requirements apply shall register with the county Sheriff in the county in which he or she resides or is temporarily domiciled. A person who lives or is temporarily domiciled outside of Nebraska and is required to register in Nebraska because of attending school or working in Nebraska shall register with the county Sheriff in the county in which he or she is employed or attends school. In certain circumstances persons may be required to register in more than one county and more than one state at the same time.

006.02 Registration must be completed within five (5) working days of becoming subject to the act. A person becomes subject to the act by pleading guilty to or being found guilty of one of the listed offenses, by being released from incarceration for one of the listed offenses in a penal facility or a private or public institution, or by entering the state having been convicted in another state of one of the listed offenses or a substantially equivalent offense. Persons being sentenced for a registrable offense in this state and persons being released from confinement must be registered before their release by the court or confinement facility.

006.03 Prior to being physically released by the court when a person is convicted of a registrable offense, the sheriff of the county in which the defendant resides or is temporarily domiciled shall obtain full registration information and documentation and forward the information and documentation to the Nebraska State Patrol within five (5) working days. If the court is not in the county where the defendant resides or is temporarily domiciled, the sheriff of the county in which the court is located shall assist by obtaining this information and forwarding it to the sheriff in the county where the defendant resides or is temporarily domiciled and to the Nebraska State Patrol within five (5) working days. The “release” by the court here occurs through probation or payment of fines rather than a subsequent formal release from the terms of probation.

006.04 Any person incarcerated in a jail, penal or correctional facility, or other public or private institution for an offense requiring registration who is not already registered shall be

registered by the jail, penal or correctional facility, or public or private institution prior to his or her release utilizing the procedures set forth in these regulations. Institutions lacking the capability for fingerprinting and photographing the person may request assistance from the sheriff. The jail, facility or institution registering the individual shall submit the registration materials to the Nebraska State Patrol within five (5) working days of obtaining the information required for the registration.

006.05 A person placed on supervised release, probation or parole is required to register prior to release by the court or confinement facility and must remain registered during the period of supervised release, probation or parole and for a period of ten (10) years after discharge from supervised release, probation or parole unless he or she is required to register for life as set forth in section 003.09 of these rules.

006.06 Registration shall be on a form approved by the Nebraska State Patrol. The form shall include the following information:

006.06A Full legal name and all aliases the person has ever used or by which he or she has been known;

006.06B Complete description of the person; including:

006.06B1 Date of birth;

006.06B2 Social security number(s);

006.06B3 Current color photograph;

006.06B4 Fingerprints - two new sets of prints must be rolled on FBI fingerprint cards.

006.06C A list of each of the registrable offenses to which the person has pleaded guilty or was found guilty;

006.06C1 The jurisdiction (place) where each offense was committed;

006.06C2 The court in which the person pleaded guilty or was found guilty

- for each listed offense;
- 006.06C3 The name under which the person pleaded guilty or was found guilty - ie. any alias used;
- 006.06C4 The name and location of each jail, penal or correctional facility, or public or private institution to which the person was incarcerated for each offense and the actual time served or confined;
- 006.06D Listing of any treatment received for a mental abnormality or personality disorder.
- 006.06E Prior registrations. If the person has been registered as a Sex Offender in another state, the dates and jurisdiction as well as nature of the registration (such as Violent Sexual Predator or prior lifetime registration) must be shown.
- 006.06F Current physical residence. This must be a physical location where the registrant actually resides even though he or she may receive mail at a post office box. Listing “homeless” or a post office box as an address is not sufficient. If a registrant is constantly moving his or her physical residence, he or she is required to re-register and must provide an address which is a physical location where he or she can be located.
- 006.06G Place of employment.
- 006.06H Association with schools. Offenders must list any schools with which there is any affiliation either as a student or employee. This requirement includes all schools and is separate and distinct from the requirement to report employment, carrying on a vocation, or attending as a student a postsecondary educational institution; however, it is sufficient for the initial notification of contacts with postsecondary educational institutions as required in section 009 below.
- 006.06I A copy of the parole or probation orders issued to the registering offender, if any, are to be included with the form.

006.07 Persons required to register must furnish all pertinent information and documents to the sheriff. In order to assure legibility and completeness, each sheriff shall then complete the registration form by asking the individual for the pertinent information and filling in the information rather than asking the offender to fill out the form. The form must then be signed and dated by the offender who is registering as well as signed and dated by the agent completing the registration. Offenders should be asked for a photo identification card or some positive form of identification to help insure that the individual is providing accurate information.

006.08 Each sheriff or registering agency shall forward the following information pertaining to sexual offender registrations to the Nebraska State Patrol within five (5) working days:

006.08A All written information including the registration form, a copy of the notification form given to the registrant if one was completed, a copy of any parole or probation orders issued to the offender, and any other information which would help in identifying any risks this particular individual may pose to the safety of the public;

006.08B Photographs. A new photograph of the person is to be taken for submission with the registration or re-registration. This can be of the Polaroid type or a standard photo. Old file photos will not suffice but may be included with a current color photograph;

006.08C Fingerprints. Two new sets of fingerprints must be obtained from the individual registering (on an FBI fingerprint card also known as a 10 print card).

006.09 The Nebraska State Patrol shall maintain a central registry of sex offenders required to register pursuant to statute. The State Patrol shall immediately transmit conviction data and fingerprints to the Federal Bureau of Investigation.

007 REGISTRATION FEES

007.01 Persons registering under this Act may not be charged a fee for registering or for the fingerprints and photographs required for registering.

007.02 Each governmental entity having responsibilities under the Act or these regulations shall be responsible for the costs incurred in performing their required duties.

008 CHANGE OF ADDRESS, SCHOOL EMPLOYMENT OR SCHOOL ATTENDANCE

008.01 A person registered under the Sex Offender Registration Act who changes his or her address must inform in writing the sheriff of the county in which he or she is currently registered of the change within five (5) working days of obtaining the new address. This requirement applies to all changes of address whether it is within the same county, to a different county within the state, or to a different state. A registrant who resides or is temporarily domiciled outside of Nebraska and is registered in Nebraska because of working or attending school in this state must inform, in writing, the sheriff of the county in which he or she is employed or attends school of any change in the status of his or her employment or school attendance. The change of address, school employment status and school attendance status form shall be approved by the Nebraska State Patrol and a copy shall be provided by the sheriff to the State Patrol within five (5) working days. If the person is relocating to another county or state, the Nebraska State Patrol shall notify the sheriff of the new county (or the central repository of the new state) of the address change.

008.02 In addition to providing the sheriff with whom the person last registered a written change of address, a person registered under this Act who relocates to another county must report to and register with the sheriff in the new county to which the move is made within five (5) working days. This new registration must be made in person. A complete new registration is not required if the sheriff already has information on the registrant but the registrant must review the information already on file and update any information that isn't current. A new photograph is to be taken if the photograph on file is over two (2) years old or if the person's appearance has changed. It is not necessary to roll a new set of fingerprints unless there have been changes due to an injury.

008.03 The change of address form and re-registration requirements apply not only to permanent changes of address, but also to a change of temporary domicile and must include notice to all places registered if the person is registered in more than one location because of working or attending school in a location different from one in which he or she resides.

008.04 If a registered person moves out of the State of Nebraska, the laws of the new state in which he or she resides will almost certainly require that he or she report to the designated state agency in the new state of residence. A list of designated state agencies is prepared by the FBI and shall be available through the Nebraska State Patrol.

008.05 If a person who is registered or is required to register is incarcerated anywhere for more than five (5) days, he or she must notify the sheriff of the county where he or she would otherwise reside or be temporarily domiciled of the incarceration within five (5) working days. The notice shall include the date and place of incarceration, reason for the incarceration, and the expected release date if that information is available. Prior to release from incarceration, the person shall notify both the sheriff of the county where incarcerated and the sheriff of the county where he or she would be residing or temporarily domiciled of a change of address as set forth in section 010.01E below. The sheriff shall forward this information to the Nebraska State Patrol within five (5) working days of receipt.

009 POSTSECONDARY EDUCATIONAL INSTITUTION CONTACTS

009.01 A person who is required to register must notify the sheriff of the county in which he or she resides in writing of each postsecondary educational institution at which he or she works, carries on a vocation, or attends school within five (5) working days of beginning the employment or attendance. A registrant who resides outside of Nebraska must notify the sheriff of the county in which the educational institution is located.

009.02 The registrant shall notify the sheriff or sheriffs in writing of any change in this employment or attendance status within five (5) working days of the change.

009.03 Notice to the sheriff of this contact with postsecondary educational institutions should be made on a form approved by the Nebraska State Patrol. This requirement is independent of and in addition to registration requirements. Having previously registered does not satisfy this requirement. The initial information can, however, be provided at the time of registration.

009.04 A sheriff receiving a postsecondary educational institution contact notice or change of

information form shall forward the information to the Nebraska State Patrol within five (5) working days of receipt.

009.05 Within five (5) working days of receipt of any information or a change of status pertaining to a postsecondary educational institution, the Nebraska State Patrol shall inform the law enforcement agency having responsibility for the campus where the institution is located. This notification shall go to the affected campus police, if any, or to the local law enforcement agency having jurisdiction where the institution is located.

010 VERIFICATION PROCEDURE

010.01 Annually, within thirty (30) days after the anniversary date of the person's initial registration date, the Nebraska State Patrol shall verify the registration information of each person registered in the central registry.

010.01A A nonforwardable verification form shall be sent to the last-reported address of the person registered.

010.01B The person registered shall sign the form after indicating whether or not the address listed is still the correct address for the person's residence and updating any other registration information. The form shall be returned to the Nebraska State Patrol within ten (10) days of receipt of the form.

010.01C If the form can not be delivered to the registrant because he or she is not at the address last reported or if the registrant fails to complete and mail the form, the registrant is in violation of the statute unless he or she can prove that the address reported in the current registration is still correct. Community notifications will continue to be made even though the registrant can not be contacted.

010.01D If the person registered has been determined by the sentencing court to be a sexually violent predator, the registration information shall be verified quarterly after initial registration.

010.01E The requirement to verify addresses shall not apply during periods in

which the registrant is incarcerated but shall resume as soon as the incarcerated person is placed on any type of supervised release, parole, or probation or is released from incarceration. Prior to release from incarceration the registrant shall report a change of address to both the sheriff in the county where he or she is incarcerated and the sheriff in the county in which he or she resides or is temporarily domiciled. Each sheriff shall forward the change of address to the Nebraska State Patrol.

010.02 Any changes in registration information obtained by the Nebraska State Patrol through the verification procedure shall be provided to the sheriff in the affected county or counties.

010.03 Local law enforcement agencies are requested, but not required, to periodically verify that the registrant is still living at the listed address. Local law enforcement agencies are also requested to update the photograph of a registered offender when officers have future contacts with the offender if his or her appearance has changed from the photograph taken for the registration.

011 RETENTION OF INFORMATION IN THE CENTRAL REGISTRY

011.01 Registration information shall be retained in the central registry unless there is a court order to expunge registry information. The registry information shall be retained even though the person registered no longer has a duty to keep the information current.

011.02 Any person registered in the central registry may petition the district court of the county in which he or she was convicted, or the county of residence for a person convicted in another state, for an order expunging the registration information. A nonresident may file in the district court of the county in which he or she is employed, carries on a vocation, attends school, or had a prior duty to register. The county attorney shall be named as the respondent and shall be served a copy of the petition. If the court finds that the petitioner's duty to register has expired, that there are no criminal charges pending against a petitioner, that petitioner is not under investigation for one of the listed offenses, and that petitioner is not a substantial risk to commit another of the listed offenses, the court may issue an order to expunge the registration information. A copy of such order shall be provided to the sheriff of any county where the petitioner has

resided during the registration period and to the Nebraska State Patrol. An expungement order may not be obtained for a registrant who is required to register for his or her lifetime.

011.03 Expungement of the registration information affects only information held by sheriffs and the central registry for sex offenders at the Nebraska State Patrol. Criminal history information maintained by law enforcement agencies concerning the underlying offenses is not affected by this expungement order except that any notation on criminal history records pertaining to sexual offender registration shall be removed.

012 RESTRICTED ACCESS TO REGISTRY INFORMATION

012.01 Information obtained under the Sex Offender Registration Act is restricted and shall be provided only to law enforcement agencies, governmental agencies conducting confidential background checks for employment purposes, and as necessary to protect the public as provided herein.

012.02 Registration information disclosed for law enforcement purposes shall be treated as confidential by law enforcement agencies and shall not be considered public record information.

012.03 Information concerning the address or whereabouts of the person required to register may be disclosed to the victim or victims of such person and parents or guardians of such victims upon the victim's request for this information to the extent that such information is contained in the sex offender registry files. The status of a person as a victim shall be documented by law enforcement before the release of such information.

013 CLASSIFICATION OF REGISTRANTS BY RISK LEVEL

013.01 The State Patrol shall assess the risk of recidivism for each person registered as a sex offender. Offenders shall be placed into a classification as a Level 1, Level 2, or Level 3 offender.

013.01A Level 1 indicates that the risk of recidivism is low and there is no need for notification to protect the public.

013.01B Level 2 indicates that the risk of recidivism is moderate and that there should be notification of particular vulnerable constituencies in the interest of public safety.

013.01C Level 3 indicates that the risk of recidivism is high and requires notification of a much wider group of citizens in the interest of public safety.

013.02 The factors used to assess the risk of recidivism shall be incorporated in a risk assessment instrument. The factors required by statute shall be used as well as other factors which predict the risk of recidivism. All offenders in the registry shall be evaluated using the risk assessment instrument based upon relevant records and data available concerning the offender. In order to assure a fair risk assessment, personnel and mental health professionals of the Nebraska State Patrol shall have access, without charge, to all documents that are generated by any governmental agency that have a bearing on the risk assessment. This includes, but is not limited to, law enforcement reports, criminal histories, and birth certificates.

013.03 Factors which minimize the risk of recidivism shall include:

013.03A Conditions of release such as supervised probation or parole;

013.03B Counseling, therapy or treatment following release;

013.03C Physical conditions such as advanced age or debilitating illness;

013.04 Factors which may increase the risk of recidivism shall include:

013.04A Criminal history of the offender;

013.04B Repetitive or compulsive behavior including the number of sex related charges and convictions and offenses committed while confined or on supervised release;

013.04C Age of the victim;

- 013.04D Age at which the offender was first charged with a sex offense;
013.04E Relationship of the offender to the victim;
- 013.04F Convictions for sex offenses in jurisdictions other than Nebraska;
- 013.04G Control of the victim through the threat or use of weapons, force or violence or the infliction of serious injury;
- 013.04H Indications of a risk of recidivism in psychological or psychiatric profiles;
- 013.04I The offender's response to treatment;
- 013.04J Behavior of the offender while confined.
- 013.05 Certain factors are, in and of themselves, indicative of a high risk of recidivism and will always result in a Level 3 classification. These factors are:
- 013.05A Torture or mutilation of the victim or the infliction of death;
- 013.05B Abduction and forcible transportation of the victim to another location;
- 013.05C Threats to re-offend sexually or violently;
- 013.05D Recent clinical assessment of dangerousness.
- 013.06 Since it may not be possible to obtain all records on all offenders, particularly those involving offenses in other states, the risk assessment instrument shall be designed so as not to penalize the offender if records are not available.
- 013.07 The Risk Assessment Instrument is appended to these rules as Attachment A and the scoring guidelines are appended as Attachment B.

RELEASE OF INFORMATION TO THE COMMUNITY

014.01 Information concerning sex offenders shall be released to the community based upon the assessment of risk that the offender will commit further sex offenses. Under no circumstances shall the name of, or any other identifying information about, the victim of a sex offense be disclosed in any release of sex offender registration data.

014.02 Level 1 - For sex offenders classified as Level 1 offenders, notification shall be provided only to law enforcement agencies likely to encounter the sex offender. Notifications to law enforcement agencies shall be made by the State Patrol by sending a facsimile, phone or electronic message. The sex offender registry information provided for Level 1 notifications is not to be released to the public.

014.03 Level 2 - For sex offenders classified as Level 2 offenders, notification shall be provided to law enforcement agencies as well as schools, day care centers, and religious and youth organizations likely to encounter the sex offender. Notifications shall be made to those groups in the affected area having expressed interest in receiving such notifications. The "affected area" shall be defined as the county in which the offender resides or expects to reside upon release from incarceration. These notifications will be made by facsimile, phone, or electronic message by the Nebraska State Patrol or local law enforcement officers. Because it is difficult to identify all of the groups that may be entitled to notification for Level 2 offenders, a public information effort will be conducted by the State Patrol to inform such groups that they may request to be included on the notification list. This list changes frequently but efforts will be made to keep the list current. The information provided for Level 2 notifications is to be used only for the protection of the receiving entity and is not to be further disseminated to the public.

014.04 Level 3 - For sex offenders classified as Level 3 offenders, notification shall be provided to all Level 1 and Level 2 recipients as well as members of the public likely to encounter the sex offender. Nebraska State Patrol shall provide initial Level 3 notifications by making news releases directed to media within the state. Additional news releases, community meetings or direct contact with neighbors may be utilized by local law enforcement agencies to provide notice in addition to the State Patrol news release. The information provided for Level 3 notifications may be further disseminated

by those receiving the information. The information contained in Level 3 news releases will also be available to persons making an inquiry about a specific individual at the Sex Offense Registry office or sheriff's office.

014.05 The information to be released in making these notifications shall include name, photograph, physical description and the offense or offenses which required the individual to register as a sex offender. It may also include address, place of employment or schooling, and vehicle license number. The information shall NOT include the name of the victim of the sex offense or any identifying information about the victim.

014.06 When technically feasible, information such as the photograph of the offender will be accessible on an electronic database. Access to this data will be restricted based upon the risk level assigned to the offender.

014.07 Notwithstanding the notification process outlined above, law enforcement agencies and probation or parole officers may provide public notification about an offender by whatever means are available and necessary if the offender is deemed to pose an imminent threat to public safety so long as the identity of the victim is not released. The release of information should be limited to public record information and must not include the risk assessment of the offender or other non-public information. The Nebraska State Patrol requests that the Sex Offender Registry personnel be notified when a local law enforcement agency has released such information.

015 REQUEST FOR HEARING ON CLASSIFICATION

015.01 Each registrant shall be notified of his or her classification as a Level 1, 2 or 3 offender by certified mail or personal contact. The registrant has five (5) working days in which to notify the Sex Offender Registration Program in writing that he or she requests to have a hearing to contest the classification level assigned by the Nebraska State Patrol. A request shall be considered timely filed if placed in the United States mail, properly addressed to the Nebraska State Patrol, Sex Offender Registration Program, P.O. Box 94907, Lincoln, Nebraska 68509, within eight (8) working days of the mailing of the classification notification to the registrant.

015.02 If a hearing is requested, it shall be held pursuant to the Nebraska Administrative Procedures Act and the Nebraska State Patrol Rules and Regulations pertaining to

administrative hearings (Title 272 - Chapter 1). The offender must specify through pleadings or at a prehearing conference what aspect of the assessment process is being challenged.

015.02A Due to the sensitive nature of the evidence which must be presented, the hearings shall be closed.

015.02B Evidence presented by either party in the form of written exhibits shall have the name(s) of the victim(s) redacted/blacked out to ensure confidentiality of the victim(s). Exhibits shall display the first and last initials of the victim(s) in any location where the name has been redacted. During testimony, the victim(s) shall be referred to by first and last initials only.

015.02C The scope of the hearing shall include a review of the accuracy of the information used in making the classification assessment and may include a review of the psychological basis of the classification instrument as well as any mitigating or aggravating evidence presented. The hearing officer may also make a qualitative assessment of any information presented concerning treatment, therapy or counseling received by the Petitioner as well as the response to any such treatment, therapy or counseling.

015.02D The State has the burden of going forward with evidence to show how the instrument was scored and with any aggravating evidence which has a bearing on the risk of reoffending.

015.02E A decision shall be made by the Superintendent within fifteen (15) working days of the hearing.

015.02F Appeals from the Superintendent's decision shall be filed in the District Court in accordance with the procedures set forth in the Nebraska Administrative Procedures Act.

015.03 The Superintendent of the Nebraska State Patrol may delegate to a hearing officer the functions of conducting prehearing conferences and

hearings, and submitting a recommended decision. The Hearing Officer shall have the duty to conduct full, fair and impartial hearings, to take appropriate action to avoid unnecessary delay in the disposition of the proceeding, and to maintain order. Hearing Officers shall have the following powers:

- 015.03A To administer oaths and affirmations;
- 015.03B To issue subpoenas as authorized;
- 015.03C To compel discovery and to impose appropriate sanctions pursuant to the Nebraska Supreme Court Rules for failure to make discovery;
- 015.03D To rule upon offers of proof and receive relevant, competent and probative evidence;
- 015.03E To regulate the course of the proceedings in the conduct of the parties and their representatives;
- 015.03F To hold prehearing conferences for simplification of the issues, settlement of the proceedings, or any other proper purposes;
- 015.03G To consider and rule orally or in writing, upon all procedural and other motions appropriate in adjudicative proceedings;
- 015.03H To fix the time for holding the record open for additional evidence or for submission of briefs;
- 015.03I To exclude people from the hearing;
- 015.03J To issue recommended decisions, rulings, and orders, as appropriate;
- 015.03K To receive exhibits and testimony so as to ensure a complete and accurate record in all hearings, including those where the agency is not represented by counsel.

015.03L To consider any relevant and probative evidence offered, in addition to the risk assessment instrument, which has a bearing on the risk of reoffending and to make a recommendation to increase or decrease the risk level if warranted by this additional information.

015.03M To take any other action consistent with the purpose of the law.

015.04 The hearing officer may, in his or her discretion, grant extensions of time or continuances of hearings upon the hearing officer's own motion or at the timely request of any party for good cause shown. A party must file a written motion for continuance within five working days of the scheduled hearing or pre-hearing conference, which states in detail the reasons why a continuance is necessary and serve a copy of the motion on all other parties.

015.04A Good cause for an extension of time or continuance may include, but is not limited to, the following:

015.04A1 Illness of the party, legal counsel or witness;

015.04A2 A change in legal representation; or

015.04A3 Pending written stipulations by either party in preparation for resolution without hearing.

015.05 In the event the Petitioner fails to appear for a pre-hearing conference or hearing, a default disposition shall be entered into the record in conformance with the Administrative Procedure Act. A default disposition will result in the Nebraska State Patrol making notification of the risk assessment level pursuant to Neb. Rev. Stat. §§29-4009 and 29-4013.

015.06 Community notification based upon classification levels shall be made after any of the following events:

015.06A Eleven (11) working days have passed since the classification notification was mailed to the offender and no request for a hearing has been received;

015.06B A requested hearing was held and no petition for review has been filed in district court within thirty (30) days after the decision has been served on the registrant by placing it in the United States mail;

015.06C A requested hearing and any subsequent appeals are final; or

015.06D The registrant's whereabouts are unknown in that he or she has failed to respond to notifications or other documents sent to the last known address or failed to appear for a hearing or pre-hearing conference without notice.

016 RECLASSIFICATION

016.01 The classification of an offender may be reevaluated and changed to a higher or lower classification if new information is received that would appear to have a bearing on the risk of recidivism. In the event of a reclassification, a new classification notice shall be provided to the offender and the offender shall have the same rights to challenge the classification as he or she had under Section 015.01 on the original classification.

016.02 An offender may petition the State Patrol for a reevaluation of his or her classification based on new information or changed circumstances which would influence the risk of recidivism. If a petition for reevaluation is received, the State Patrol shall reevaluate the assigned classification and give the offender notice of their actions. The offender shall then have the same rights to challenge the classification as he or she had under Section 015.01 on the original classification. An offender shall not petition for a reevaluation more often than once every twelve (12) months.

017 ENFORCEMENT OF VIOLATIONS OF THE ACT

017.01 Violations of the Act include: failure to register as required; failure to make proper notification of change of an address; failure to sign the notification form provided by the court, the County Treasurer, the Department of Correctional Services, or the Department of Motor Vehicles; failure to complete and return the verification form within the prescribed time limits; and providing false information on the registration or verification forms. Only persons required to register under the Act can be prosecuted for violation of the Act.

017.02 Any person required to register under the Sex Offender Registration Act who violates the Act is guilty of a Class IV felony unless the act which caused the person to be required to register was a misdemeanor, in which case a violation of the Act is a misdemeanor of the same class as the original sexual offense.

017.03 A violation of these regulations is an infraction as set forth in Neb. Rev. Stat. §29-431. The penalty set out in Neb. Rev. Stat. §29-436 is fine of \$100 for the first offense and up to \$500 for subsequent offenses. Both persons who are required to register under the Act and persons who are not required to register under the Act can be prosecuted for violation of the regulations.

017.04 Any law enforcement agency, court, or state agency finding evidence of violations of the Act or these regulations may take any authorized law enforcement action and shall forward the information for prosecution to the County Attorney for the county in which the violation occurred.

Attachment A

Nebraska Sex Offender Risk Assessment Instrument

Subject _____

D.O.B. ____/____/____

Last, First, Middle

Investigator _____

Date Completed

1. **Number of Convicted Counts for Sex/Sex Related Offenses (Including current offense)**

One (0) _____

Two (40) _____

Three or More (60) _____

Comments: _____

2. **Number of Convicted Counts for Other Offenses, besides traffic infractions
(Excluding sex/sex related offenses)**

None (0) _____

One or Two (20) _____

Three or More (30) _____

Comments: _____

3. **Other Sex/Sex Related Attorney Filed Charges Not Resulting in Conviction**

None (0) _____

One or Two (10) _____

Three to Seven (20) _____

Eight or More (30) _____

Comments: _____

4. **Age at Arrest for First Sex/Sex Related Conviction/Juvenile Adjudication**

25 or Under (30) _____

26 or Over (20) _____

Comments: _____

5. **Relationship of Offender to Victim(s) (More than one category may apply)**

Family/Step Family/Foster Children (5) _____

Acquaintance (5) _____

Stranger (Never met or met once) (5) _____

Comments: _____

Page 1 Total _____

Nebraska Sex Offender Risk Assessment Instrument

Subject _____
Last, First, Middle

6. **Sex Offense Convictions in More Than One State or Federal Jurisdiction**
(Federal Jurisdiction in the State of Nebraska is considered from another jurisdiction.)

No (0) _____
Yes (20) _____

Comments: _____

7. **Victim(s) Gender**

Female (15) _____
Male (20) _____
Both Male and Female (30) _____

Comments: _____

8. **Age of Sex Crime Victim(s) (Check All That Apply)**

Eleven and Under (15) _____
Twelve to Seventeen (15) _____
Eighteen and Over (5) _____

Comments: _____

9. **Nature of Sexual Assault Behavior (Check All That Apply)**

Possession or Manufacturing Sexually Explicit Material of a Child without
Verbal or Physical Interaction (0) _____
Fondling/Manipulate/Seduce/Coerce/Authority (5) _____
Threats of Violence (10) _____
Vulnerable Victim Due to Physical or Mental Abnormality (15) _____
Offender Provided or Encouraged the Use of
Drugs/Chemicals/Alcohol to Control Victim (20) _____
Physical Force or Violence/Restrained Victim/Threatened with Weapon or
Dangerous Object (25) _____
Serious Bodily Injury (30) _____

Comments: _____

10. **Supervision (Check All That Apply)**

Supervision at Time of Assessment (0) _____
No Supervision at Time of Assessment (10) _____
History of Violation of Supervision (20) _____

Comments: _____

Page 2 Total _____

Nebraska Sex Offender Risk Assessment Instrument

Subject _____
Last, First, Middle

11. Disciplinary History While Incarcerated (Check All That Apply)

No Disciplinary Reports/None Found (0) _____
Threatened Victim (Documented Reports) (10) _____
Disciplined for Violent Acts/Sexual Exploitations (10) _____

Comments: _____

12. Treatment (Consider Incarceration, Court Ordered or Post Release)

No Information Found/Available or Not Court Ordered (0) _____
Consistent Doctoral Level Professional Determination(s) that
 NO Treatment is Required (0) _____
Successfully Participated/In Post Release/Court Ordered Treatment (0) _____
Terminated from Treatment/Withdrew against Professional
 Recommendation/Reached Maximum Benefit but Professionally
 Determined a High Risk/Unsatisfactory Treatment Participation (10) _____
Not Involved in Court Ordered/Professionally Recommended Treatment (20) _____

Comments: _____

13. Mental/Cognitive Functioning (Check All That Apply)

No Information Available/No Diagnosis Given (0) _____
Developmental Disability Diagnosis (5) _____
Psychotic Disorder Diagnosis (5) _____
Personality Disorder Diagnosis or Traits (5) _____

Comments: _____

14. Time Between the Most Recent Arrest for a Felony and/or a Class I/II Misdemeanor Conviction and Prior Release from Court Ordered Confinement or Supervision

(If Under Supervision When Arrest for New Conviction Occurs Score 24 Months or Less)

Not Applicable (0) _____
More than 24 Months (5) _____
24 Months or Less (20) _____

Comments: _____

Page 3 Total _____

PAGE ONE TOTAL _____
PAGE TWO TOTAL _____
PAGE THREE TOTAL _____

TOTAL POINTS _____

Nebraska Sex Offender Risk Assessment Instrument

Subject _____
Last, First, Middle

Override to High Risk (Check All That Apply-No Points)

- 1. Victim tortured or acts resulted in death _____
- 2. Victim abducted and forcibly transported to another location _____
- 3. Perpetrator articulates to officials/treatment professionals an unwillingness to control future sexually assaultive behavior or plans to re-offend violently or sexually _____
- 4. Recent clinical assessment of dangerousness by a sex offender treatment or doctoral level professional asserting perpetrator presents significant risk to re-offend. _____

Downward Departure to Low Risk (Check All That Apply-No Points)

- 1. Debilitating Illness _____
- 2. Advanced age _____

Risk Assessment

TOTAL POINTS _____

LEVEL 1	LEVEL 2	LEVEL 3
Low Risk	Moderate Risk	High Risk
80 and Below	85-125	130 or Above

Departure

- 1. A departure from the presumptive risk category is warranted
- 2. If yes, circle the appropriate category

LEVEL 1	LEVEL 2	LEVEL 3
Low Risk	Moderate Risk	High Risk

- 3. If yes, explain the basis for departure: _____

Attachment B

NEBRASKA
SEX OFFENDER RISK ASSESSMENT

INSTRUMENT

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SEX OFFENDER RISK ASSESSMENT INSTRUMENT**ITEM #1**

*Number of Convicted Counts for
Sex/Sex Related Offenses (Including
current offense)*

One _____(0)

Two _____(40)

Three or More _____(60)

SCORING CRITERIA

Total number of convicted counts for all

ITEM #2

sex/sex related offenses, including the current offense. A sex offense charge that has an unknown disposition is not considered a conviction.

COMMENTARY

This item is designed to measure an offender's prior history of sexual offending resulting in legal sanctions. This item is a frequent predictor of sexual re-offense among the studies reviewed.

EXAMPLES

15. The subject has 3 convictions for First Degree Sexual Assault.
Score as Three or more
2. The subject is originally charged with 4 counts of Sexual Assault of a Child. During a plea agreement, the offender is convicted of only two counts of Sexual Assault.
Score as Two

Number of Convicted Counts for Other Offenses, besides traffic infractions
(Excluding sex/sex related offenses)

NEBRASKA

SEX OFFENDER RISK ASSESSMENT INSTRUMENT

None	____(0)
One or Two	____(20)
Three or More	____(30)

violations that create a more serious public safety hazard (i.e., Driving While Intoxicated, Driving Under Suspension). They should not include traffic infractions (e.g., speeding). Only convicted counts should be used. Include Nebraska and out of state criminal history. A charge that has an unknown disposition is not considered a conviction.

COMMENTARY

This item is designed to measure the strength of an offender's proclivity toward sexual offending and the lack of deterrence of previous contacts with law enforcement and the judicial system. A sexual assault conviction(s) combined with criminal history shows an increase in the likelihood of sexual recidivism.

EXAMPLES

1. The subject has convictions for Shoplifting, Burglary, and Disturbing the Peace.
Score as Three or more

2. The subject has convictions for D.U.S., Assault, and Sexual Assault.
Score as One or Two (Don't score the sexual assault)

3. The subject has convictions for speeding, no operator's license, DWI and forgery.
Score as One or Two (Don't score the speeding or no operator's license)

SCORING CRITERIA

Total number of misdemeanor or felony convicted counts (excluding all sex/sex related offenses). Misdemeanor convicted counts should include drug/alcohol arrests, property crimes and felony or misdemeanor traffic

ITEM #3

Other Sex/Sex Related Attorney Filed

Charges Not Resulting in Conviction

None	____(0)
One or Two	____(10)

NEBRASKA

SEX OFFENDER RISK ASSESSMENT INSTRUMENT

Three to Seven _____(20)

Eight or More _____(30)

SCORING CRITERIA

Total number of misdemeanor or felony sex/sex related attorney filed charges that the subject had but was not convicted. No convictions should be used. Include criminal history from Nebraska and other jurisdictions. This would include any sex/sex related charges associated

with the current conviction that were plea-bargained. Include sex offense charges that have an unknown disposition, juvenile criminal adjudications (if available) and dismissed charges that were part of a plea bargain, but not wholly dismissed, declined, not guilty or nolle prosecute.

COMMENTARY

This item is designed to assess the extent of prior sex offense allegations. Often plea agreements reduce several charges to one count when there were several victims or several assaults of the same victim. Use total number of filed charges available in legal documentation (i.e., Court records, police reports, and criminal history files-Nebraska and out of state criminal history).

EXAMPLES

1. Three counts of Sexual Assault of a Child were filed but pled to one count of Sexual Assault of a Child.
Score as One or Two (The offender was convicted of one, leaving two charges)
2. The subject has 8 charges on his criminal history from police records, but court records indicate only three charges were filed.
Score as Three to Seven (Only attorney filed charges are utilized)
3. The subject is charged with Sexual Assault but pleads guilty to Disturbing the Peace.
Score as One or Two

ITEM #4

Age at Arrest for First Sex/Sex Related Conviction/Juvenile Adjudication

NEBRASKA
SEX OFFENDER RISK ASSESSMENT INSTRUMENT

25 or Under _____(30)

26 or Over _____(20)

SCORING CRITERIA

Use exact age on date offender was arrested for the first sex/sex related conviction/juvenile adjudication. This includes information on juvenile criminal adjudications for sex offenses (when available). This does not include sex offenses where disposition is unknown.

COMMENTARY

This item is designed to measure the increased risk for sexual re-offense posed by offenders who begin assaulting at a young age. Studies have shown the younger the offender at first offense the greater the likelihood of re-offense. The age of 25 is a community standard cut off age utilized in sex offender risk assessment research.

NEBRASKA
SEX OFFENDER RISK ASSESSMENT INSTRUMENT

NEBRASKA

SEX OFFENDER RISK ASSESSMENT INSTRUMENT

ITEM #5

Relationship of Offender to Victim(s)
(More than one category may be scored)

Family/Step Family/
Foster Children _____(5)

Acquaintance _____(5)

Stranger (Never met or met once)

_____ (5)

convictions, documented self-admissions and founded allegations investigated by an agency authorized to carry out such a duty (e.g., Child Protective Services (CPS)) in available documentation, including those sex offenses with an unknown disposition. If the nature of the relationship changes over the course of the assaultive behavior, score only the relationship when the behavior began. Otherwise, score each applicable victim category.

COMMENTARY

This item is designed to measure the increased risk for re-offense posed by offenders who assault more than one of the listed categories. Someone who would offend a family member and stranger or acquaintance is more likely to re-offend.

- ◆ Family/step family/foster children means those members that live within or outside the offender's residence. This also includes extended family members, i.e., nieces, nephews, cousins, cohabitating partner.
- ◆ Acquaintance refers to someone the victim knew prior to the assault.
- ◆ Stranger refers to someone unknown by the victim prior to the assault or assault occurs after first meeting/contact.

EXAMPLES

1. Family - A daughter visiting her mother for a weekend is assaulted by her stepfather that lives with her mother. He assaults a friend of the stepdaughter, three times. Score as step family and acquaintance (Although the stepdaughter didn't live there full time and isn't a blood relative, she is still considered step family. The friend is an acquaintance as defined in this item.)
2. Acquaintance - A known neighbor, family friend, teacher, girlfriend living elsewhere, or clergy are just a few examples of Acquaintances.
3. Stranger - The offender stalked the victim for weeks before the offense or saw her at an event earlier and followed her home. She was not acquainted with him at all.
Score as Stranger

SCORING CRITERIA

This includes victims for all sex offense charges,

NEBRASKA
SEX OFFENDER RISK ASSESSMENT INSTRUMENT

NEBRASKA

SEX OFFENDER RISK ASSESSMENT INSTRUMENT

ITEM #6

Sex Offense Convictions in More Than One State or Federal Jurisdiction (Federal Jurisdiction in the State of Nebraska is considered from another jurisdiction.)

No _____(0)

Yes _____(20)

Score YES for offenders who were convicted of sex offenses in more than one state or federal jurisdiction. This must be a conviction. Do not include sex offenses that have an unknown disposition. (Federal Jurisdiction in the State of Nebraska is considered from another jurisdiction.)

COMMENTARY

This item is designed to measure the strength of an offender's risk of sexual offending by moving across state or federal jurisdictions. This was found to be a strong predictor in the instrument development research.

EXAMPLES

1. The subject is being released from jail in Nebraska for a sex offense conviction, and previously had a sex related conviction in Colorado.
Score as YES
2. The subject is released from parole in Nebraska for a sex offense conviction, and had two other charges for sex related crimes in Kansas. Score as NO (The subject had charges in Kansas not convictions.)
3. The subject is being released from a Nebraska jail for a sex offense conviction, and had a previous sex related conviction from The U.S. Military in Nebraska, i.e., Offutt AFB.
Score as YES (Federal Jurisdiction in the State of Nebraska is considered from another jurisdiction.)
4. The offender is on interstate parole in Nebraska for a sex offense conviction that occurred in Kansas. He has an Iowa sex offense conviction, but the sentence was served with his Kansas sentence.
Score as YES (Two convictions, time served in two jurisdiction.)

SCORING CRITERIA

NEBRASKA

SEX OFFENDER RISK ASSESSMENT INSTRUMENT

ITEM #7

Victim(s) Gender

Female _____(15)

Male _____(20)

Both Male and Female _____(30)

SCORING CRITERIA

Check only one. Check the one category that describes the gender of the sexual assault victim(s) over the course of the offender's behavior. Use official records, including victim statements, to determine gender of victim(s). This includes victims for all sex offense charges, convictions, documented self-admissions and founded allegations investigated by an agency authorized to carry out such a duty (e.g., CPS) in available documentation, including those sex offenses with an unknown disposition. Exclude exonerated charges (i.e., not guilty, nolle prosecute).

COMMENTARY

This item is designed to measure the breadth of the offender's pool of victims. Research has shown that offenders with male victims are at higher risk to re-offend. An offender who assaults both genders is likely to be at higher risk because of a broader or varied deviant sexual preference/behavior. Score item only for direct victims of sexual assault (i.e., don't score witnesses to the assault unless they were sexually assaulted as well).

EXAMPLE

The subject was charged with sexual assault of a male child and an adult female, but one charge was dismissed in a plea agreement.

Score Both Male and Female (Has a history of assaulting both genders)

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ITEM #8

Age of Sex Crime Victim(s)

(Check All That Apply)

Eleven and Under _____(15)

Twelve to Seventeen _____(15)

Eighteen and Over _____(5)

SCORING CRITERIA

Check all that apply. Check the age group(s) that represents the age of the victim(s) over the course of the offender's behavior. If the offender has multiple victims, score the item for each victim. However, do not score any age category more than once. In cases where the offense occurred over an extended period of time (i.e., several years), score each age category that was violated. Use official records, including victim statements, to determine number and age(s) of victim(s). This includes victims for all sex offense charges, convictions, documented self-admissions and founded allegations investigated by an agency authorized to carry out such a duty (e.g., CPS) in available documentation, including those sex offenses with an unknown disposition.

Exclude exonerated charges (i.e., not guilty, nolle prosecute).

COMMENTARY

This item is designed to measure the breadth of the offender's pool of victims. An offender who crosses over different age groups also may be at higher risk because of a broader or varied deviant sexual preference/behavior (i.e., sexual attraction toward children AND adolescents). This item reflects the number of different age groups for all victims of sex/sex-related offenses. Score item only for direct victims of sexual assault.

EXAMPLES

1. The subject offended against one victim from age 5 until 12.
Score as Eleven and Under AND Twelve to Seventeen
2. The subject offended against his daughter at age 10, went to prison for that conviction and upon release offended her again at age 18.
Score as Eleven and Under AND Eighteen and Over

Score All three age categories

3. The subject offended against his 10-year-old neighbor, his 14-year-old stepdaughter and his 38-year-old wife.

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ITEM #9

Nature of Sexual Assault Behavior (Check All That Apply)

Possession or Manufacturing of Sexually Explicit Material of a Child without Verbal or Physical Interaction _____(0)

Fondling/Manipulate/Seduce/Coerce/ Authority _____(5)

Threats of Violence _____(10)

Vulnerable Victim Due to Physical or Mental Abnormality _____(15)

Offender Provided or Encouraged the Use of Drugs/Chemicals/Alcohol to Control Victim _____(20)

Physical Force or Violence/Restrained Victim/Threatened with Weapon or Dangerous Object _____(25)

Serious Bodily Injury _____(30)

6. Physical Force or Violence/Restrained Victim/Threatened with Weapon or Dangerous Object- Physical force or restraint (e.g., slapping, gagging, tying

SCORING CRITERIA

Check all that apply. Score the nature of the sexual assault in the current offense and any previous sexual assaults noted in official documentation. Do not score any category more than once.

COMMENTARY

This item is designed to reflect the level of risk posed by an offender who uses varying degrees of force. The greater the amount of force or the more types of force utilized, the higher the score.

DEFINITION/EXAMPLES

1. Possession or Manufacturing of Sexually Explicit Material of a Child without Verbal or Physical Interaction-This would involve any visual depiction of a sexually explicit nature involving a child as observer or actor, where there is no manipulation, positioning or verbal direction. Score any other behavior in the appropriate category.

2. Fondling/Manipulate/Seduce/Coerce/Authority-Offers rewards, tells victim they will be in trouble, misleads victim, makes demands, or holds position of authority over victim. Such acts are common in cases of nonviolent incest or statutory rape.

3. Threats of Violence - Threatening to harm the victim, someone or something else if the victim resists, yells or tells someone about the incident.

4. Vulnerable Victim Due to Physical or Mental Abnormality - A victim that is mentally or physically unable to make a rational decision or defend themselves due to incapacitating disease, mental retardation, physical disabilities, etc.

5. Offender Provided or Encouraged the Use of Drugs/Chemicals/Alcohol to Control Victim - The offender provided drugs/chemicals/alcohol to a minor victim prior to or during the offense. The offender took advantage of an adult or minor victim's impaired state. The offender "Slipped a Mickey" to the victim.

or holding down, shoving or pulling at the victim), physical direction or control of victim that caused no injury or injury not requiring medical treatment.

7. Serious Bodily Injury - Physical force or restraint that caused injury that required

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medical care or treatment (e.g., broken bones, internal injuries, lacerations)

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ITEM #10

Supervision (Check All That Apply)

Supervision at Time of Assessment _____(0)

No Supervision at Time of Assessment _____(10)

History of Violation of Supervision _____(20)

supervision? This would include Probation, Parole, civil commitment, other supervised release, or monitoring. Does not include pre-trial diversion or bond.

- 2) Has the subject ever violated any official supervision? This includes unsatisfactory completion of probation. (Formal documentation of violation should be included).

COMMENTARY

This item does not give any points to subjects that are under supervision. They are seen as less likely to re-offend while being supervised.

This item is designed to assess an offender's risk for sexual offending behavior in spite of being under some form of supervision. Offenders who have committed offenses while under court or correctional supervision are more likely to re-offend whether it was a sex/sex related violation or not.

EXAMPLES

1. A subject is placed on probation by the court for Sexual Assault.
Score Supervision
2. An offender is released without supervision from the Penitentiary after a three-year sentence for Sexual Assault. He was on Probation for Burglary when he was arrested, charged and convicted of the Sexual Assault.
Score No Supervision AND History of Violation of Supervision
3. A subject is on parole after serving time for sexual assault and has a positive urinalysis test.
Score Supervision AND History of Violation of Supervision

SCORING CRITERIA

There are two issues to be scored:

- 1) At the time the assessment is completed
is the offender under some type of official

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ITEM #11

Disciplinary History While Incarcerated
(Check All That Apply)

No Disciplinary Reports/None Found

Threatened Victim (Documented
Reports) _____ (10)

Disciplined for Violent Acts/Sexual
Exploitations _____ (10)

officially documented disciplinary history of infractions. Score misconduct during incarceration for the instant sexual assault offense. The infraction must have resulted in some type of sanction. Charges that were dismissed should not be counted.

Victim threats must be from official documents (i.e., jail reports, police reports, institutional records).

_____ (0)

COMMENTARY

This item is designed to measure the propensity of the offender to disregard rules, even when in a highly structured and supervised environment. It is also a measure of antisocial behavior due to that disregard for rules.

DEFINITIONS/EXAMPLES

1. Violent or Sexually Exploitative offenses for which the offender was found guilty that involved a weapon, physical altercation, sexual activity or could have created serious disruption of the facility (i.e., Possession/Manufacture of a Weapon, Flare of Tempers/Minor Physical Contact, Mutinous Acts, Inciting a Riot, Sexual Activity etc.)

SCORING CRITERIA

Check all that apply. Taken from offender's

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ITEM #12

Treatment (Consider Incarceration, Court Ordered or Post Release)

No Information Found/Available or Not Court Ordered _____(0)

Consistent Doctoral Level Professional Determination(s) that NO Treatment is Required _____(0)

Successfully Participated/In Post Release/Court Ordered Treatment _____(0)

Terminated from Treatment/Withdrew against Professional Recommendation/ Reached Maximum Benefit but Professionally Determined a High Risk /Unsatisfactory Treatment Participation

Not Involved in Court Ordered/ Professionally Recommended Treatment _____(20)

SCORING CRITERIA

Check the one category that best describes the subject's most recent involvement in recommended or court ordered treatment/therapy while incarcerated or under court supervision for sexual assault, regardless of type of treatment (i.e., Domestic Violence, Anger Management, Sex Offender Treatment). Not involved in Court Ordered/Professionally Recommended Treatment will not be checked for defendants who were granted probation or sentenced to county jail if sentencing or probation requirements did not specify treatment.

COMMENTARY

This item is designed to measure an offender's willingness to address issues related to his or her sexually assaultive behavior as recommended. The willingness to be actively involved in treatment generally reflects stability, motivation to improve oneself, and cooperation with authority. Failure to actively participate in recommended treatment is likely to reflect denial of problems, responsibility or need for change. Termination, withdrawal or lack of progress in treatment may be indicative of impulsiveness, antisocial behavior, and general instability.

EXAMPLES

1. The subject was on probation for sexual assault, with order for alcohol treatment, but does not comply.
Score Not Involved in Court Ordered/Professionally Recommended Treatment
2. The offender attends sex offender treatment as a parole condition.
Score Successfully Participated/In Post Release/Court Ordered Treatment
2. Doctoral Professionals recommend treatment in pre-sentence reports but the judge doesn't order any treatment as part of probation.
Score No Information Found/Available or Not Court Ordered

3. Offender sentenced to Nebraska Department of Correctional Services (NDCS) for 6 years

without a specific court order for treatment. NDCS classification or treatment staff recommend inpatient sex offender treatment but offender refuses.

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Score Not Involved in Court
Ordered/Professionally Recommended Treatment.

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ITEM #13

Mental/Cognitive Functioning
(Check All That Apply)

No Information Available/No Diagnosis
Given _____(0)

Developmental Disability
Diagnosis _____(5)

Psychotic Disorder Diagnosis
_____ (5)

Personality Disorder Diagnosis
or Traits _____(5)

Check all that apply. Diagnosis determined by a licensed Psychologist or Psychiatrist at any point in the subject's life.

COMMENTARY

Individuals with developmental disabilities or psychotic disorders may have difficulties making proper choices. Personality disorders and traits may greatly increase an individual's likelihood of re-offending. Do not include diagnoses considered for rule out.

An override to Level 3 should be noted when a professional documents prior to the offender's release that the offender poses a significant (i.e., high, higher, enhanced) risk of re-offense.

DEFINITION/EXAMPLES

1. Developmental Disability Diagnoses: Mental Retardation, Autism, Rett's Disorder, Childhood Disintegrative Disorder, Asperger's Disorder, Pervasive Developmental Disorder.
2. Psychotic Disorder Diagnoses: Schizophrenia, Paranoid, Delusional, Schizophreniform, Schizoaffective, Brief Psychotic Disorder, Psychotic Disorder; Not Otherwise Specified (NOS).
3. Personality Disorder Diagnoses: Paranoid Personality, Schizoid, Schizotypal, Antisocial, Narcissistic, Borderline, Histrionic, Avoidant, Dependent, Obsessive-Compulsive Personality, Personality Disorder (NOS).

SCORING CRITERIA

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ITEM #14

Time Between the Most Recent Arrest for a Felony and/or a Class I/II Misdemeanor Conviction and Prior Release from Court Ordered Confinement or Supervision (If Under Supervision When Arrest for New Conviction Occurs Score 24 Months or Less)

Not Applicable _____(0)

More than 24 Months _____(5)

24 Months or Less _____(20)

SCORING CRITERIA

Use information gathered from official documents (i.e., Criminal History Court and Correctional Documents). Determine the most recent felony and/or Class I or Class II Misdemeanor(s) committed by the offender after previous court ordered confinement, or while under official supervision (i.e., Probation, Parole, or Electronic Monitoring). The time frame is from the time the offender was arrested for the new conviction after his release from some type of supervision (when available, relevant records of juvenile confinement or supervision may be utilized). If the offender was arrested for a new offense and later convicted, it should be scored as 24 Months or Less. This should include only new charges for which the offender has been convicted not violations of supervision without new charges.

COMMENTARY

This item is designed to show an offender's lack of regard for the criminal justice system. Offenders that re-offend or commit crimes after court ordered confinement, parole, probation or court supervision are more likely to ignore the possibility or threat of arrest. These offenders show a higher risk to re-offend due to their apathy toward the criminal justice system.

EXAMPLES

1. The offender is convicted in June of 1995 for Assault, sentenced to one year probation, and released from probation in June 1996. He is arrested for Sexual Assault in January 1997 and convicted in July 1998.
Score 24 months or Less (Was arrested for the convicted sexual assault Less than 24 months after supervision)
2. The offender is convicted in June of 1995 for Sexual Assault, sentenced to two years in jail, and is released in June of 1997. He is arrested for possession of Cocaine in October of 1999 but not convicted of a class IV Felony until February 2000.
Score More than 24 months (Arrest was more than 24 months after jail release)

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Override to High Risk

#1

Victim tortured or acts resulted in death

the acts resulted in death.

COMMENTARY

This item is designed to address the risk to the public based on the offender's extreme sexual violence, regardless of offense history. An individual who tortures or kills the victim, is likely to be utilizing extreme methods to avoid detection, focused on the torture or death as the arousing quality of the offense, and/or has total disregard for others. The severity of the behavior and threat to the public warrants High Risk (Level 3) notification.

EXAMPLES

1. This may involve keeping the victim restrained or confined for an extended period, mutilation of the victim (e.g. burning/cutting the victim's face/body in several places, removing body parts, etc.), or ongoing degradation of the victim (e.g., use of feces/urine, victim forced to wear animal collars or have sex with animals, etc.). This may result in either physical injury that requires surgical repair, long-term hospitalization, or long-term psychological intervention.
2. The death of the victim has to be directly related to the offense, i.e., victim stabbed to death, dismembered, or left to die. This does not include a victim that may commit suicide or die of natural causes after the offense, i.e., heart attack weeks after the offense. If the victim dies of such at the time of the offense, this should be included. If the victim has a heart attack or stroke at the time of the offense and dies several weeks later, this should be included.

SCORING CRITERIA

Offenders automatically receive a High Risk (Level 3) designation if the victim was tortured or

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Override to High Risk

#2

Victim abducted and forcibly transported to another location

(Level 3) designation if the victim was abducted and forcibly transported to another location.

COMMENTARY

This item is designed to address the risk to the public based on the offender's abduction or forcible transportation of the victim. An individual, who abducts or forces the victim to go to another location, is more likely to torture or kill the victim, subject the victim to ongoing assault and/or be utilizing a well-developed plan in an attempt to avoid detection/arrest. It is also suggestive of an offender who will do whatever necessary to meet the goal of sexually assaulting a victim.

EXAMPLES

1. An offender promises to show a child at the park a new puppy and the child gets in the vehicle with the offender, who then drives the victim to a different location.
2. The offender grabs a child in the public restroom and carries them away from the location to a more secluded area in the same park.
3. The offender threatens a victim with a weapon if he or she does not drive to another area, thus forcing the victim to leave the first location.
4. The offender grabs a victim from a parking lot, forces the victim in a vehicle and transports the victim to another location.

SCORING CRITERIA

Offenders automatically receive a High Risk

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Override to High Risk

#3

Perpetrator articulates to officials/treatment professionals an unwillingness to control future sexually assaultive behavior or plans to re-offend violently or sexually

an unwillingness to control future sexually assaultive behavior or plans to re-offend violently or sexually.

COMMENTARY

This item is designed to measure an offender's increased likelihood to re-offend when he or she continues to plan future assaults or admits that he or she has no plans to discontinue the offending behavior. Some offenders will acknowledge that they enjoy the offending behavior that they have attempted to stop, but "can't" or do not see their behavior as wrong, therefore have no plans to stop the behavior. There must be documentation to law enforcement, supervising officials, court officials, or a treatment professional. Do not score if the offender denies the desire to re-offend but expresses no desire to engage in treatment or sees no need for further change.

EXAMPLES

1. An offender tells his probation officer, "I know that I'll do it again," or "I just can't help myself. As soon as I'm off probation, I will try it again."
2. An offender tells the sex offender counselor, "I can get away with it again. There isn't anything wrong with it in some cultures so you don't have the right to try to change me. I'll do it again, if I get the chance."

SCORING CRITERIA

Offenders automatically receive a High Risk (Level 3) designation if the perpetrator articulates to officials or treatment professionals

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Override to High Risk

#4

Recent clinical assessment of dangerousness by a sex offender treatment or doctoral level professional asserting perpetrator presents significant risk to re-offend

treatment or doctoral level professional asserting the perpetrator presents a significant risk to re-offend.

COMMENTARY

This item is designed to measure an offender's increased likelihood to re-offend based on professional judgement. A treatment or doctoral professional that has evaluated or worked with the client will have knowledge of the offender's willingness to address issues, level of denial, level of minimization, and other risk assessment factors that are likely to lead to re-offense. Use the most recent clinical assessment available.

EXAMPLES

1. A licensed psychologist completes an evaluation for the court that indicates the offender is at high risk to re-offend, especially if the offender does not participate in treatment. The offender does not participate in treatment. The offender should be placed on Level 3.
2. A licensed mental health practitioner who works with a child molester notes that the offender continues to masturbate to deviant fantasies involving female children, has started drinking again, has reunited with his wife, who has visitation with her three female children and has recently lost his job. Further, his risk to re-offend is high and given the current situation seems to be dangerous to re-offend.

SCORING CRITERIA

Offenders automatically receive a High Risk (Level 3) designation if there is a recent clinical assessment of dangerousness by a sex offender

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Downward Departure to Low Risk

#1

Debilitating Illness

prohibit re-offense. One must consider not only the offender's mobility, but their access to potential victims through coercion or potential victim characteristics. There must be supporting medical documentation from a treating physician.

COMMENTARY

This item is designed to evaluate the likelihood an offender could offend based on his or her current condition. An individual who is in a persistent vegetative state could be at minimal risk to re-offend, based on immobility and potential lack of access to child victims. However, some other disabilities or illness would not necessarily lessen the risk level and in fact may be utilized to manipulate potential victims.

EXAMPLES

1. An offender who has a history of assaulting adult women is in a long-term care facility with multiple sclerosis, but utilizes a motorized wheelchair. This type of person would still have access to potential victims (i.e., nurses, other elderly patients some of whom may be vulnerable because of their own medical conditions). Therefore, no downward departure would be warranted.
2. A child molester who has been in a car accident, resulting in paralysis from the neck down, has constant care and no contact with children may be at minimal risk. However, prognoses should be determined from medical reports, i.e., temporary paralysis that could eventually result in some use of the hands and arms versus permanent quadriplegia.

SCORING CRITERIA

The presence of a debilitating illness is an automatic downward departure to Low Risk (Level 1). The illness must be severe enough to

Downward Departure to Low Risk

#2

Advanced age

re-offense. Other factors need to be considered, like access to adult victims and physical/mental condition of the offender. There must be supporting medical documentation from a treating physician.

COMMENTARY

This item is designed to evaluate the possibility of decreased risk based on the offender's age.

An offender with no history of child molestation may have less likelihood of re-offending at an advanced age, but not always. There are other factors that need to be considered such as living arrangements, cognitive impairment, physical incapacitation, i.e., there are older individuals who run marathons, go to gyms, continue to sexually assault, become physically combative or dangerous.

EXAMPLE

1. An 80-year-old offender is released from prison for a rape that occurred when he was 56-years-old. He has a history of exposing himself to female prison staff, making sexual comments to them and has grabbed one staff member's breast while in the prison hospital for a minor medical problem just prior to release. He is released to a long term care facility, but walks without assistance and exercises regularly. This man is not likely to stop his inappropriate behavior, may expose himself to nurses/patients, fondle nurses/patients. It is important not to ignore the offender's prior record and minimize the potential for future behavior as being a "dirty old man." This could be a female offender as well. Although the occurrence of females offending against adults is lower, the possibility should not be ignored.

SCORING CRITERIA

There is an automatic downward departure to Low Risk (Level 1) for an offender who meets this criterion. The age and condition of the offender must be sufficient enough to prohibit

